

1944 Supplement
To
Mason's Minnesota Statutes, 1927
and
Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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Mercury & Indemnity Co., 215M60, 9NW(2d)413. See Dun. Dig. 324.

An appeal bond insufficient or unenforceable as a statutory obligation may be valid as a voluntary, or so-called common-law, obligation. *Id.* See Dun. Dig. 327, 331.

An appeal bond, invalid for noncompliance with statute, is unenforceable as a voluntary obligation, if it lacks consideration. *Id.* See Dun. Dig. 331.

9500. Appeal from order—Supersedeas.

A supersedeas bond given under a void appeal does not operate to stay proceedings. *Hampshire Arms Hotel Co. v. St. Paul Mercury & Indem. Co.*, 215M60, 9NW(2d) 413. See Dun. Dig. 326.

Where the consideration claimed for an appeal bond is that there was an appeal from a judgment, which had no existence, there is no consideration for the bond, because there could be no appeal. *Id.* See Dun. Dig. 327.

General rule is that the obligors in an appeal bond are estopped to contradict a recital therein of the existence of the judgment appealed from, but this is not true where appellee promptly moves for dismissal of the appeal on the ground that no judgment has been entered, the dismissal of the appeal being in effect an adjudication that the appeal, and consequently the bond, was void, and operates to estop appellee from asserting that the bond was valid or that the attempted appeal was a consideration for it. *Id.* See Dun. Dig. 331.

Where appellate court takes jurisdiction and hears an unauthorized appeal, the obligors on the appeal bond

receive a benefit, which is consideration for the bond, and in such a case the grounds of the appellate court's decision, whether it be on the merits or otherwise, makes no difference, but there is not consideration where appellee procures a prompt dismissal of the appeal on the ground that it is a nullity. *Id.* See Dun. Dig. 331.

Where appellee procured dismissal of an attempted appeal from a judgment in an unlawful detainer case as premature, because taken before entry of judgment, obligors on a supersedeas bond given under this section are not liable for the rents accruing between the dates of appeal and the dismissal, because of the invalidity of the appeal and lack of consideration for the bond. *Id.* See Dun. Dig. 331.

Where attempted appeal from a judgment in an unlawful detainer case was premature because taken before entry of judgment, and appellee promptly obtained dismissal of appeal, defendant is liable independently of appeal bond for any damage caused plaintiff by the attempted appeal, though he and the surety are not liable as obligors under the appeal bond. *Id.* See Dun. Dig. 331.

9501. Money judgment—Supersedeas.

Where appeal bond does not recite any consideration, and is given for purposes of an appeal from a judgment which does not exist, it is insufficient to create liability either as a statutory obligation or common-law obligation. *Hampshire Arms Hotel Co. v. St. Paul Mercury & Indem. Co.*, 215M60, 9NW(2d)413. See Dun. Dig. 331.

CHAPTER 81

Arbitration and Award

9513. What may be submitted—Submission irrevocable.

Where contracting parties first agree to a statutory arbitration and later make complete submission to an arbitration which does not comply with statute but which is good at common law, it will be given effect as a common-law arbitration, overruling *Holdridge v. Stowell*, 39M360, 40NW259. *Park Const. Co. v. I.*, 209M182, 296NW475, 135ALR59. See Dun. Dig. 499, 500.

Doctrine is discarded that general agreements to arbitrate oust jurisdiction of courts, and are therefore illegal as against public policy. *Id.* See Dun. Dig. 499.

A contract provision for arbitration of disputes "at the choice of either party" is not self-executing, and may be modified, rescinded, or waived by agreement or acts and conduct of parties and this, notwithstanding a further provision that a "decision" of arbitrators "shall be a condition precedent to any right of legal action." *Independent School Dist. No. 35 v. A. Hedenberg & Co.*, 214M82, 7NW(2d)511. See Dun. Dig. 487a.

Building contractor's conduct in failing to demand arbitration of dispute for over a year and in proceeding to trial of action for damages without making such demand or asking for a stay to permit arbitration con-

stituted a waiver of its right to arbitration. *Id.* See Dun. Dig. 487a.

Word "irrevocable," even as used in an arbitration statute, means that contract to arbitrate cannot be revoked at the will of one party over the objection of the other, but that it can only be set aside for facts existing at or before time of its making, which would permit revocation of any other contract. *Id.* See Dun. Dig. 498.

Arbitration in insurance.

Glidden Co. v. Retail Hardware Mut. Fire Ins. Co., 181 M518, 233NW310, 77ALR616. *Aff'd* 284US151, 52SCR69, 76 LEd214.

9516. Procedure after filing.

If arbitration is under statute award is summarily reviewable, but if proceeding was under common law, an action lies on the award. *Park Const. Co. v. I.*, 209M182, 296NW475, 135ALR59. See Dun. Dig. 507.

9517. Grounds of vacating award.

Where arbitrators are permitted by submission to fix their own fees, such allowance to themselves is a severable matter, subject to review and correction as such without effect on award otherwise. *Park Const. Co. v. I.*, 209M182, 296NW475, 135ALR59. See Dun. Dig. 509.

CHAPTER 82

Actions Relating to Real Property

GENERAL PROVISIONS

9521. Notice of lis pendens.

Lis pendens filed by attorney suing for money judgment in sum equal to a third interest in land acquired by former client was of no effect as against subsequent purchaser of land without actual notice. *Melin v. Mott*, 212M517, 4NW(2d)600. See Dun. Dig. 5669.

Notice of lis pendens need not be filed or published in an action by the state to quiet title under Laws 1939, c. 341. *Op. Atty. Gen.* (374g), Dec. 4, 1940.

ACTIONS FOR PARTITION

9527. Judgment for partition—Referees.

Appeals from orders or interlocutory judgments in partition proceedings to the supreme court. Laws 1941, c. 448.

An interlocutory judgment directing sale is open to review on appeal from final judgment in partition. *Burke v. Burke*, 209M386, 297NW340. See Dun. Dig. 389, 7345.

9530. Confirmation of report—Final judgment.

Appeals from orders or interlocutory judgments in partition proceedings to the supreme court. Laws 1941, c. 448.

9537. Sale ordered, when.

Appeals from orders or interlocutory judgments in partition proceedings to the supreme court. Laws 1941, c. 448.

9540. Sale of real property under action for partition—Notice.

Where separate owners each had a home building on one tract of land and that tract and another some distance away were sold en masse, sale was valid as against alleged homestead rights where there was a relatively large single mortgage covering both tracts and court retained jurisdiction to pass upon any homestead claims and enforce them against proceeds of sale. *Burke v. Burke*, 209M386, 297NW340. See Dun. Dig. 7343.

Provision that distinct farms or lots shall be sold separately is directory and not mandatory, and contravention thereof does not render a sale void, but voidable upon a showing of fraud or prejudice or for other good cause. *Id.*

9544. Final judgment on confirming report.

Appeals from orders or interlocutory judgments in partition proceedings to the supreme court. Laws 1941, c. 448.